APPENDIX

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The following is a verbatim reproduction of pages 21-36 of the Union's reply brief before the Court of Appeals addressed to the particularities of Boeing's claim in that court that the fines levied by the Union were excessive in amount and otherwise arbitrarily imposed. The record references have been renumbered to correspond with the pagination of the Appendix in this Court, and the cross-references to unprinted parts of the Union's opening and reply briefs in the Court of Appeals have been deleted.

2. The Particular Factors Said To Show That The Fines Were Unreasonably Large In Amount.

We now turn to consider the particular factors said to show that the fines were unreasonably large in amount.

(a) It is said that the fines were excessive because the strikebreakers were "required to pay amounts exceeding their earnings . . ." (Co. br. p. 14). The premise of this argument is that a fine is *ipso facto* unreasonable if it is larger than the gain which the wrongdoer realized from working during the strike in violation of his duty to refrain from strikebreaking.

The argument is irrelevant to those strikebreakers who, having appeared for trial, apologized, and pledged loyalty to the Union, were fined fifty percent of their strikebreaking earnings. Any concept of gearing the size of the fine to the amount of the earnings is surely satisfied by levying the penalty at one-half of the wrongful gain. For if the criterion is the sum that the strikebreaker earned in violation of the rule, it is clearly rational to divest the rule-breaker of the entirety of the sum—not merely one-half—that he made by reason of his breach. His fellows who did not work during the strike sustained the identical loss; they

sacrificed their pay from the struck employer. There is no reason why the strikebreaker should be in a better monetary position than the striker. In short, if measuring the fine in relationship to earnings is the sole valid criterion, it would hardly be unreasonable were a union to assess the penalty at the entirety of the sum earned in violation of the rule. The fine would do no more than equalize the financial sacrifice of the strikebreaker and the striker. In this case, therefore, levying the fine at one-half of strikebreaking earnings in consideration of the strikebreaker's repentence and pledge of future loyalty is well within any notion of reasonableness.

The Company's excess-of-earnings argument, therefore, is grounded in solicitude for the unrepentant strikebreaker who did not appear for trial and who remains unregenerate. It is that strikebreaker, the Company contends, who cannot reasonably be fined a flat sum of $450. Why? What ineluctable moral imperative commands fixing the upper limit of a strikebreaker's fine to the maximum strikebreaking pay that he earned during the period of his violation? A fine is punishment. It is traditionally assessable at a sum greater than the monetary benefit that the wrongdoer derives from his offense. An antitrust violator pays treble damages (*Zenith Radio Corp.* v. *Hazeltine Research*, 395 U.S. 100, 113 (1969)); a Fair Labor Standards Act violator pays twice the unpaid minimum wages or the unpaid overtime compensation (Fair Labor Standards Act, § 16(b), 29 U.S.C. § 216); a tortfeasor or contract violator whose offense is considered egregious pays punitive damages (*U.A.W.* v. *Russell*, 356 U.S. 634, 646 (1958)); a thief who steals less than $100 may be fined $200, in addition to being ordered to make restitution. D.C. Code, § 22-2202 (1967). In short, since a fine is punishment, there is nothing in principle which limits a fair fine to the member's monetary gain from his rule-violation. Whether it should be more, less, or the same is a matter for the union's own independent determination as part of its autonomous right of self-government.

Once shown that a fine need not be limited in its maximum size to strikebreaking earnings, there is nothing to suggest that the $450 fine in this case is excessive in amount. In *Scofield*, the Supreme Court stated that it "essentially accepted the position of the National Labor Relations Board dating from *Minneapolis Star & Tribune Co.*, 109 NLRB 727 (1954) . . . holding that a union could fine a member for his failure to take part in picketing during a strike . . ." (394 U.S. at 428). In *Minneapolis Star* the Board found that "the imposition of a $500 fine on Carpenter by the . . . Union is not violative of Section 8(b)(1)(A) of the Act." 109 NLRB at 729. By approving reference to *Minneapolis Star* the Supreme Court did not blink at a $500 fine. By what logic is a $500 fine for failure to perform picketing duty acceptable but a $450 fine for strikebreaking unreasonable, particularly since failure to perform picketing duty results in no strikebreaking earnings at all in contrast to the financial gain entailed in working for the struck employer? Indeed, as *Minneapolis Star* illustrates, there are many union offenses which do not involve financial gain for the violator, so that the size of the fine for the offense is often simply not measurable in terms of a violator's monetary profit from his wrong. There is no reason, accordingly, why a fine for strikebreaking should be implacably related to earnings derived from the wrong when a fine for other offenses is not.

(b) It is said that, as the "normal financial obligation of a member of the Union is discharged" by payment of "dues of $5.50 per month or $66.00 per year," a $450 fine for strikebreaking is unreasonable as "a major escalation in financial obligation" (A. 21). If ever there were a comparison of incommensurables, this is it. Dues and initiation fees are the contribution of each member to the sum necessary to operate a union. A fine is a penalty imposed for violation of a rule. One has nothing to do with the other in the amount required to fulfill the relevant purpose. One may agree that a member does not expect to pay $450

as his contribution to defraying the expense of running a union. That is very far from saying that it is not a penalty fairly contemplated for violating a basic institutional obligation to refrain from strikebreaking. Surely this distinction is within the reasonable range of the Union's self-governing discretion.

(c) It is said that the fine was unreasonable considering "the fact that employees in the New Orleans area had been subjected to the devastating effects of Hurricane Betsy a week before the strike began" (Co. br. p. 16). But this act of God did not distinguish between the striker and the strikebreaker. Both strikers and strikebreakers were alike the victims of the hurricane; both endured the same privation it inflicted. By what standard of reasonableness should the Union be expected to extend compassion to the strikebreaker who abandoned the strike in order to escape the identical distress that the steadfast striker equally suffered?

(d) It is said that the fine is unreasonable considering, if suit is instituted against the strikebreaker to collect it, "the time lost from work in defense of the civil court action and his respective attorney's fees and court costs" (Co. br. p. 15). Since the Company has undertaken the defense of the collection suits against the strikebreakers (A. 7; 77, 99-100, 109), in this case at least the Company is pleading its own litigation costs rather than the strikebreakers'. Passing that, the plea is wide of the mark. When the Supreme Court decided in *Allis-Chalmers* that a fine could validly be collected by court action, it surely did not mean an action in which the strikebreaker incurred no expense as a defendant. A reasonable fine does not become an unreasonable fine because of the cost to a strikebreaker in resisting the payment of it. For a strikebreaker, no less than for the rest of the community, "the expense and annoyance of litigation is 'part of the social burden of living under government.'" *Petroleum Exploration* v. *Public Service Commission*, 304 U.S. 209, 222 (1938).

(e) Heavy stress is placed on the circumstance that in one collection action instituted by the Union—and the evidence shows only that one (A. 135, Tr. 48)—the Union in its petition sought attorneys' fees of $180 (Co. br. pp. 13, 14). If Louisiana allows attorneys' fees in that or any amount, the quarrel is with Louisiana law, not with the reasonableness of the fine. If Louisiana does not allow attorneys' fees in that or any amount, the quarrel is with an overstated request for relief—not a novelty in litigation—and again not with the reasonableness of the fine.

(f) We conclude with consideration of the standard of reasonableness innovated by the examiner. According to him, "a fine of 35 percent or less of a strikebreaker's earnings at his regular rate of pay" and of "80 percent or less of overtime or premium pay" is in totality "presumptively, a reasonable fine" (A. 30). Every party to the proceeding before the Board—the General Counsel (A. 48), the Company (A. 53), and the Union (Exc. 34, 36, 37, not reprinted in the Appendix)—expressed its dissatisfaction with this formula. It is a Procrustean solution, drawn from thin air, utterly alien to the way in which any union tribunal has ever determined what a proper fine should be, and wholly foreign to the way in which any judge has ever considered whether or not a fine was reasonable.

The examiner premises his formula on the proposition that a "reasonable fine" must be "less than a total deterrent to working during a strike"; as he sees it, a fine in an amount that operates as "total deterrence" to strikebreaking is unreasonable (A. 27). This premise is quite inexplicable. If the object of a fine is to secure observance of a rule by penalizing violation of it, it passes understanding why the fine should be fixed at a level which tempts violation by leaving a margin for profitable infraction. The examiner compounds the incomprehensible by his further assertion that a "total deterrent" interferes with an employer's "right to protect and carry on his business" dur-

ing a strike by blocking effective recruitment of a work force from among the strikers (A. 28)! We had supposed that it could at least be taken for granted that, whatever an employer's "right" to try to operate during a strike, it was surely not a union's duty to cooperate with him by enforcing less than total observance of a rule against strikebreaking.

The examiner's tour de force demonstrates the incompatibility between NLRB inquiry into reasonableness and the statutory bar against NLRB regulation of a union's internal affairs. The infelicity of the examiner's solution suggests that he and his colleagues, well-enough versed in dealing with the NLRB's staple business, do not have the aptitude or experience requisite to the task of regulating union self-government, an area outside the sphere of their conventional concern. More fundamentally, whatever the level of competence that would be brought to bear, there can be no NLRB determination of reasonableness which does not impose upon the union the agency's judgment of how union discipline should be administered. That regulation of a union's internal affairs is simply no part of the statutory design of the National Labor Relations Act or of the job that Congress commissioned the Board to perform.

II.

THE COMPANY'S ADDITIONAL CLAIMS OF ARBITRARINESS BY THE UNION, OTHER THAN THE ALLEGED UNREASONABLENESS OF THE SIZE OF THE FINE, WERE NOT URGED BY THE GENERAL COUNSEL; THEIR ADVANCEMENT IS THEREFORE PROCEDURALLY BARRED, BESIDES BEING DEVOID OF SUBSTANTIVE WORTH.

Aside from the alleged unreasonableness of the fine, the Company urges that the Union acted arbitrarily in other respects. These additional claims of arbitrariness were not advanced by the NLRB General Counsel. We therefore consider them separately because, aside from their lack

of substantive worth, the Company is procedurally barred from presenting them in view of the General Counsel's refusal to tender them to the Board.

A. Procedural Bar

By urging claims of arbitrariness not advanced by the General Counsel the Company seeks to enlarge upon the complaint that the General Counsel issued and litigated. This is especially evident in that the General Counsel and the Union stipulated, but the Company did not, that there was no issue concerning the regularity and fairness of the internal union proceeding eventuating in the imposition of the fines (A. 80-81, 118-119).

Section 3(d) of the Act bars the Company's attempt to enlarge the issues tendered by the General Counsel. That section provides that the General Counsel "shall have final authority . . . in respect of the . . . issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board . . . ." In obedience to this command, it is the Board's settled interpretation that "the decision whether to issue a complaint, the contents of the complaint, and the management of the prosecution before the Board is entrusted to the sole discretion of the General Counsel . . . . It follows that only the General Counsel may move to amend a complaint to allege an additional violation of the Act. Otherwise the management of the cause would *pro tanto* be taken from the General Counsel and entrusted to a private party, which is contrary to the scheme of the statute and the specific provision of Section 3(d)."[20] This Court, as others, has uniformly ap-

[20] *Sailors' Union of the Pacific*, 92 NLRB 547, n. 1 (1950). See also, *Local 1012, UE (General Electric Co.)* 187 NLRB No. 46, sl. op. p. 4, n. 2, p. 5, n. 10, 76 LRRM 1038 (1970); *Sunbeam Plastics Corp.*, 144 NLRB 1010, 1011, n. 1 (1963); *Dallas Concrete Co.*, 102 NLRB 1292, 1296-97 (1953); *Crowley's Milk Co.*, 88 NLRB, 1049, 1073 (1950); *Times Square Stores Corp.*, 79 NLRB 361, 365 (1948).

proved the construction that the Board "lacks power to allow amendment of a complaint without consent of the general counsel." [21]

Furthermore, even were there power to adjudicate claims at the instance of a private party which the General Counsel does not allege, there is an insuperable procedural due process objection to their entertainment in this case. For there has been no adequate notice that the claims were at issue, nor any fair opportunity to defend against them. It is elementary that "the Board may not make findings of fact and order related remedies on issues not charged in its complaint or litigated in the subsequent hearing," particularly where the notice that a respondent has been given by the General Counsel is that the claim is *not* in issue.[22]

Accordingly, the Company is foreclosed from presenting the additional claims it seeks to tender, both because it would circumvent the General Counsel's final authority over the issuance, scope, and prosecution of the complaint, and because of the fundamental unfairness of confronting a party with a claim of which it had no adequate notice and against which it had no sufficient opportunity to be heard in defense.

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[21] *International Union of Electrical Workers* v. *N.L.R.B.*, 110 U.S. App. D.C. 91, 289 F.2d 757, 761-762 (1960). See also, *Steelworkers* v. *N.L.R.B.*, 129 U.S. App. 260, 263, 393 F.2d 661, 664 (1968); *National Maritime Union* v. *N.L.R.B.*, 423 F.2d 625, 626 (C.A. 2 1970); *Wellington Mills Division, West Point Mfg. Co.* v. *N.L.R.B.*, 330 F.2d 579, 590-591 (C.A. 4 1964), cert. denied, 379 U.S. 882 (1964); *Piasecki Aircraft Corp.* v. *N.L.R.B.*, 280 F.2d 575, 588 (C.A. 3 1960), cert. denied, 364 U.S. 933 (1961); *N.L.R.B.* v. *Bar-Brook Mfg. Co.*, 220 F.2d 832, 834 (C.A. 5 1955).

[22] *General Teamsters Local 992* v. *N.L.R.B.*, ——U.S. App. D.C. ——, 427 F.2d 582, 588 (1970). See also, *Rodale Press* v. *F.T.C.*, 132 U.S. App. D.C. 317, 320-322, 407 F.2d 1252, 1256 (1968); *S.S. Kresge Co.* v. *N.L.R.B.*, 416 F.2d 1225, 1234-1235 (C.A. 6 1969).

B. Substantive Merits

The procedural bar aside, consideration of the merits of the Company's claims of arbitrariness shows that nothing would be left of the design of the proviso to exclude a union's internal affairs from NLRB oversight were those claims thought to present issues cognizable under section 8(b)(1)(A) of the Act.

1. The Company complains that "neither before nor during the strike did the Union warn employees that fines or any other action would be taken against those who worked during the strike" (Co. br. pp. 12-13). But the IAMAW Constitution explicitly defines misconduct of a member to include "Accepting employment in any capacity in an establishment where a strike . . . exists as recognized under this Constitution, without permission" (A. 5; 143). And the Constitution is no less explicit that commission of this offense, like others, shall "warrant a reprimand, fine, suspension and/or expulsion from membership, or any lesser penalty or any combination of these penalties as the evidence may warrant after written and specific charges and a full hearing . . ." (Pet. 36a, A. 5; 142). There was, therefore, ample forewarning. Moreover, it beggars belief that any union member, or any person living in today's industrial society, can fail to know that strikebreaking is a cardinal union offense. This record shows actual knowledge (A. 60-61, 69-70, 73-74). There is thus an explicit written rule and ample evidence that the standard of conduct it requires was known. This is more than enough. *International Brotherhood of Boilermakers* v. *Hardeman,* 39 U.S.L.W. 4275, 4278-79 (S. Ct. Feb. 24, 1971). It is therefore unnecessary to invoke the view that "where a member's act is clearly in derogation of an obvious group interest, either because the group's dedication to particular ideas or goals is clear or because the member's act is especially hostile to more general group interests, the association could properly expel un-

der a very vaguely worded rule, or indeed without any rule."[23] Nor is it necessary to remind that the "rule that 'ignorance of the law will not excuse' . . . is deep in our law . . . ."[24]

This answers the Company's insistence that the IAMAW constitutional "provisions had not been effectively communicated to the employees" (Co. br. p. 14). We add the NLRB General Counsel's own refutation of the Company's claim made in his brief to the Board (p. 5):

> Members may reasonably be expected to be aware of the duty of loyalty, even absent general provisions therefor commonly found in union constitutions . . . . Moreover, it would be manifestly unfair to require a union to warn its members about conduct in which they have not yet engaged and which the union could not reasonably be expected to anticipate. Indeed, where the amount of the fine turns out unreasonable, the warning could be interpreted as a threat which itself may constitute a violation of Section 8(b)(1)(A).

A final variant is the Company's assertion that "[n]o consideration was given" to "whether or not . . . [an individual] knew he was in violation of the Union's rules" (Co. br. pp. 15, 26). The short answer to this plea in mitigation is that there is no sufficient evidence of individual ignorance. Those who did not appear for trial can hardly complain that they did not receive the benefit of a plea that they did not make. Those who appeared for trial, apologized, and pledged loyalty to the Union received the benefit of a reduced fine of fifty percent of strikebreaking earnings. Finally, whether an individual plea of ignorance if made should be believed, and the effect to be given to it if credited, are surely matters within a union's self-

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[23] Note, *Developments in the Law, Judicial Control of Actions of Private Associations,* 76 Harv. L. Rev. 985, 1018 (1963).

[24] *Lambert* v. *California,* 355 U.S. 225, 228 (1957).

governing discretion. A plea of "individual circumstances" (Co. br. p. 15) cannot be, as the Company would have it, the subject of a mass claim unrelated to a particular person; it must be a pinpointed personalized inquiry directed to a specific individual, a course the Company does not take and for which the record would be quite inadequate.

2. The Company asserts that "Fines had never been levied on members of the Union before for any reason" (Co. br. p. 13). But the Union had been in being only about two years when the strike took place (Pet. 35a, n. 1, A. 4; 78-79), so that it did not have a long history. It was empowered by the IAMAW Constitution to levy fines, and there is utterly no basis for an implied claim that the power had evaporated by desuetude.

3. The Company complains that "trials were held even if the employee did not appear" (Co. br. p. 13). The IAMAW Constitution provides (A. 145), and each accused was informed that (Pet. 36a, A. 5; 163), "if you fail to appear when notified, the trial shall proceed as though the member were in fact present." Accordingly, each accused was afforded the opportunity to be present, and an accused's failure to appear was his own voluntary act. "The right to be present may be waived by a party or his counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted or are about to take place, and in that event the trial may proceed . . . ."[25] Section 101(a)(5) of the LMRDA provides that no member may be disciplined unless "afforded a full and fair hearing", but this obviously does not mean that an accused may defeat the administration of discipline by voluntarily absenting himself from the hearing which is afforded him.

4. The Company complains that "[t]here is no evidence that anyone was found not guilty" (Co. br. p. 13). This

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[25] 5 Moore's Federal Practice ¶ 39.14, p. 748 (2d ed. 1969).

is erroneous in fact and irrelevant in law. The record shows a "Not Guilty" verdict as to two accused, a "No Fine" disposition as to a third, and a "mistrial" without retrial as to a fourth (A. 174, 81-82, 126). In any event, if all accused are guilty there is no reason why any should be found innocent.

5. The Company complains that there "was no notification to employees by the Union that it had reduced or would reduce the fines under some circumstances" (Co. br. p. 13). The accused employees would have known of the availability of reduced fines for repentant strikebreakers had they appeared for trial or at the ensuing union meeting at which their penalty was determined. Any ignorance by the employees—if indeed they were ignorant—resulted from their own failure to participate in the proceedings, and is their own fault for which they have no one to blame but themselves.

6. The Company complains that the "notification to the employees of the charge against them did not advise them of the penalties which might be imposed upon them" (Co. br. p. 13). Section 101(a)(5) of the LMRDA provides that a member be "served with written specific charges." This requires that the elements of the alleged offense be set forth, but it does not require a statement of the potential range of discipline in the event that guilt is found. The object of a charge is to give "an accused member . . . sufficient notice to enable him to prepare his defense,"[26] and fulfillment of this object does not require apprisal of the potential penalty in the charge itself.

7. The Company complains that the "amount of $450.00 was determined before any of the hearings or trials were held . . ." (Co. br. p. 15). All that the record suggests is that the officers of the Union recommended the size of the

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[26] Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1079 (1951).

fine to the trial committees (A. 123). But there is nothing to show that each trial committee did not, as required by the IAMAW Constitution, retain full power to "consider and agree upon its recommendation of punishment," and that the members at the ensuing union meeting to consider the recommendation did not retain full power to decide what the punishment should be (A. 146-147). And that the power was in fact exercised is shown by the fifty-percent-of-strikebreaking-earnings fine assessed against the repentant strikebreakers.

8. According to the Company, a "request was made to the Company by the Union that certain of the fined employees be discharged, and it waited until January 8, 1968, to withdraw the request" (Co. br. p. 14). The Company's thought must be that the Union attempted job discrimination, and that an otherwise unobjectionable fine becomes tainted with illegality if job discrimination is attempted at the same time.

The claim is baseless. The paradigmatic situation existed in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954). There the Board remedied the discriminatory deprivation of work sustained by the employee (*id.* at 728), but declined to interfere with the fine imposed upon him for violation of the union rule (*id.* at 729). The Supreme Court in *Scofield* approved *Minneapolis Star* in terms, observing that it "essentially accepted the position" of the Board exemplified by *Minneapolis Star* "where the Board . . . distinguished internal from external enforcement in holding that a union could fine a member for his failure to take part in picketing during a strike but the same rule could not be enforced by causing the employer to exclude him from the work force or by affecting his seniority without triggering violations of §§ 8(b)(1), 8(b)(2), 8(a)(1), 8(a)(2), and 8(a)(3)." 394 U.S. at 428.

Accordingly, assuming that the Union attempted job discrimination in this case, it has nothing to do with the con-

tinuing vitality of the Union's independent right to fine for strikebreaking and to collect the fine by means other than job discrimination.

9. The Company complains that the Union in its newspaper castigated the strikebreakers (Co. br. pp. 15-16). Strikebreaking is not an endearing activity and the expression of resentment against it is the exercise of freedom of speech.

10. The Company contends that the Union could not fine even those members who did *not* resign from the Union. The basis of this contention is the claim that "some or all" of the strikebreakers who "did not resign" failed to do so "because they were told they could not do so or were not aware that they could do so" (Co. br. pp. 18-19). Accordingly, the argument runs, their membership was "involuntary," and an "involuntary" member is not subject to union discipline (Co. br. pp. 18-19, 26-27).

The Company first advanced this theory to the Board in a "supplemental and reply brief" served May 2, 1969, four months after the trial examiner's decision issued. This is too late. The "time for giving notice of the matters of fact and law asserted is prior to the hearing, not in . . . [a] 'post-complaint theory of the case' unveiled in a post-hearing brief." [27]

On its merits, the claim of "involuntary" membership is singularly untenable. Under the terms of the union security agreement between the Company and the Union (A. 154-158), no employee who is not a member of the Union need join the Union, so that all employees who did become members did so because they wanted union membership. Furthermore, even if it could be said that membership was

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[27] *N.L.R.B.* v. *Majestic Weaving Co*, 355 F.2d 854, 861 (C.A. 2, 1966); *Boyle's Famous Corned Beef Co.* v. *N.L.R.B.*, 400 F.2d 154, 164-165 (C.A. 8, 1968); *S.S. Kresge Co.* v. *N.L.R.B.*, 416 F.2d 1225, 1234-1235 (C.A. 6, 1969).

constrained, the Supreme Court in *Allis-Chalmers* ruled that, so long as an individual was a full member, regardless of the reason for his status, he was subject to union discipline to require his observance of union rules. The Court explained that (388 U.S. at 196):

> The majority *en banc* below nevertheless regarded full membership to be "the result not of individual voluntary choice but of the insertion of [this] union security provision in the contract under which a substantial minority of the employees may have been forced into membership." 358 F.2d, at 660. But the relevant inquiry is not what motivated a member's full membership but whether the Taft-Hartley amendments prohibited disciplinary measures against a full member who crossed the union's picket line. It is clear that the fined employees involved in these cases enjoyed full union membership. . . . Allis-Chalmers offered no evidence in this proceeding that any of the fined employees enjoyed other than full union membership. We will not presume the contrary.

The Company seeks to finesse the *Allis-Chalmers* ruling by arguing in effect that, even though it does not matter whether or not membership was initially compelled, the member must have and be told that he has a wholly unconstrained opportunity to resign at will at any time. At this point the Company's position and the Union's position are in full collision. For it is the Union's position that, whatever right to resign that a member has and exercises, a mid-strike resignation does not free a member from his existing obligation to refrain from strikebreaking for the duration of the current controversy.

Finally, even were the Company's legal position tenable, there is no factual predicate for its assertion. The record shows—the evidence having come in on another issue—that any member who wanted to resign knew that he could and how to go about it. The examiner found that "in the past,

in 1963," the Company "believed and so advised personnel when such matters arose, that, in a no-contract period, an employee, who wished to resign from the Union and to discontinue authorization for check off of dues, could do so by writing to the Company and to" the Union (A. 8; 92, 107), and "the Company had no reason to believe that its understanding of the procedure was disputed" (A. 8). Based on its understanding, the Company during the current controversy advised its labor relations personnel that, if they were asked by union members about resignation, they should tell the member that "in the past, the procedure has been to send a registered or certified letter to the Union and to the Company . . . stating he wishes to terminate his membership in the Union and to cancel his payroll authorization for Union dues deductions" (A. 9; 90-92, 187, 102-103). Supervisors and other management people did tell members that resignation could be effected by writing to the Union and the Company (A. 9-10; 104, 68-69, 73, 116, 129). As one witness stated, "It was general all over the plant that you . . . just had to send the letters . . . " (A. 68). And 119 members did resign (Pet. 35a), a number which graphically confirms ample knowledge that resignation could be effected. Accordingly, there is simply no factual basis for the Company's assertion that strikebreakers who did not resign failed to do so "because they were told they could not do so or were not aware that they could do so" (Co. br. pp. 18-19).

In sum, we have explored the merits of the Company's claims of arbitrariness, not because their decision is properly the office of this proceeding, but to show by their character that they are simply not the business of the Board. Review of the administration of union discipline to enforce a valid rule is a field foreign to the Board.